

# **WISHA REGIONAL DIRECTIVE**

**WISHA Services**

**Department of Labor and Industries**

## **1.19**

# **HOMEOWNERS AS GENERAL CONTRACTORS**

**Date Issued: August 9, 1996**

### **I. Background:**

The Washington Industrial Safety and Health Act (WISHA) is found in Chapter 49.17 of the Revised Code of Washington. The primary obligation created by the statute is found in RCW 49.17.060, which states that "Each employer: (1) Shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his employees . . .; and (2) Shall comply with the rules, regulations, and orders promulgated under this chapter."

To aid in determining the scope of this requirement, the statute defines "employer" in part as "any person, firm, corporation, partnership, business trust, legal representative or other business entity which engages in any business, industry, profession, or activity in this state *and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons*" (RCW 49.17.020(3), emphasis added).

Periodically, questions are raised regarding the extent of WISHA jurisdiction over homeowners who are "acting as the general contractor" in building their own homes, and the extent to which (given the unique circumstances in such cases) the Department of Labor and Industries chooses to exercise that jurisdiction. This WISHA Regional Directive addresses those questions.

### **II. Scope and Application:**

This WISHA Regional Directive, which will remain in effect indefinitely, applies whenever WISHA compliance staff encounter homeowners that appear to be acting as general contractors in the building of their own homes.

This WRD incorporates the substance of WISHA Interim Operations Memorandum #96-5-C, which is hereby repealed.

### III. Interpretive Guidance:

Homeowners are subject to WISHA requirements to the extent that they are functioning as contractors with employees, subject to the following guidelines:

A. Are homeowners subject to WISHA for remodeling projects?

Homeowners shall not be considered subject to WISHA for remodeling and other activities not subject to workers' compensation requirements under the provisions of RCW 51.12.020(2).

B. Is a homeowner subject to WISHA when doing business with an unregistered contractor?

Homeowners shall not be considered subject to WISHA simply because the contractor with whom they are doing business is unregistered; if the contractor operates as a contractor and/or represents himself or herself to be a contractor, the homeowner does not therefore become indirectly liable for the contractor's violation of the contractor registration law. As with any potential employer, determining whether a homeowner is the *de facto* employer depends primarily upon the question of whether the essence of the contract is the contractor's personal labor and whether the homeowner is in some fashion directing the contractor's day-to-day activities.

### IV. Special Inspection Protocols:

A. Should homeowners acting as general contractors be issued a citation under *Stute*?

Homeowners acting as general contractors shall not be issued a "parallel citation" using the *Stute* analysis.

B. How can an inspector handle the situation if abatement is achieved?

If abatement of the hazard in such circumstances has been achieved, the WISHA inspector may (subject to supervisory review) choose not to conduct an inspection or issue a citation.

C. What sort of settlement approach can the region take in the case of such citations?

In the event that an inspection is performed and a citation issued, regional hearings officers and regional compliance managers may choose to pursue a liberal settlement approach in dealing with such homeowner citations, provided that the cited hazards are abated and/or unlikely to recur.

Frank P. Leuck, Assistant Director  
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